Reconsideration of the application is requested.

Claims 1-24 remain in the application.

Applicants acknowledge the Examiner's acceptance of the amended drawing, which was filed with the response on November 8, 2004.

Applicants appreciatively acknowledge, in "Response to Amendments" items 3-5 and 7 on page 2 of the above-identified final Office Action, the Examiner's withdrawal of the objections to Figure 1, the title of the invention, and claims 3-7, 10-13, 16, and 21.

Applicants further acknowledge, in "Response to Amendments" item 8 on page 2 of the above-identified final Office Action, the Examiner's withdrawal of the rejections to claims 9-13 17, 23 and 24 under 35 U.S.C. § 112, second paragraph, in view of the previously filed amendments.

In "Response to Amendments" item 6 on page 2 of the above-identified final Office Action, the Examiner objected to the specification because the term "practically" was mistyped as "practally" in the substitute specification. Accordingly, applicants have submitted a corrected paragraph in this response.

In "Response to Amendments" item 9 on page 2 of the above-identified final Office Action, claims 1, 8, 14, 19, and 22 have been rejected as being indefinite under 35 U.S.C. § 112, second paragraph.

Specifically, the final Office Action states that claims 1, 8, 14, 19, and 22 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. While applicants agree that claims must particularly point out and distinctly define the metes and bounds of the subject matter desired to be protected by the patent grant, applicants respectfully note that this standard is maintained in the claims as presently constituted. In contrast to the applicants position, the

final Office Action alleges that claims 1, 8, 14, 19, and 22 are "not clear, precise and unambiguous as to:

1) How the first update service is related to the second updated service, or

2) Whether the first update service is a distinct module/device from the second and the first service, or

3) Whether the first update service is to only receive a request for update and the second update service is to only update the runtime library software module."

Applicants respectfully traverse.

Applicants respectfully assert that the claims are clear and precise. Claims 1, 8, 14, 19, and 22, as shown below, explicitly demonstrate that the first update service and the second update service are part of "the" runtime library. This expressly indicates that although the services may be different versions, both are of the same runtime library.

Claim 1 calls for, *inter alia*, a method of operation in an application service provision apparatus having an application service provision runtime library with multiple versions, the method including:

receiving, by **a first update service** of a first version **of the application service provision runtime library**, a request to update an application to a second later version of the runtime library; and

a second update service of the second later version **of the runtime library** upgrading the application to the second later version of the runtime library.

Claim 8 calls for, *inter alia*, an apparatus including:
storage medium having stored therein programming instructions designed to implement a dispatcher on the apparatus to

receive notification, from **a first update service** of a first version of **an application service provision runtime library**, of an application requesting update to a second later version of the application service provision runtime library, and

notify **a second update service**, of said second later version of **the application
service provision runtime library**, of said request; and

at least one processor coupled to the storage medium to execute the programming
instructions.

Claim 14 calls for, *inter alia*, an apparatus including:

storage medium having stored therein programming instructions designed to implement a

first version of **an application service provision runtime library**, including **a first update
service** equipped with the ability to

receive a request from an application to update the application to a second later

version of the application service provision runtime library, and

notify a selected one of

a second update service of the second later version of **the application
service provision runtime library** of said request, and

a dispatcher of the apparatus of said request; and

at least one processor coupled to the storage medium to execute the programming
instructions.

Claim 19 calls for, *inter alia*, an apparatus including:

storage medium having stored therein programming instructions designed to implement a

first version of **an application service provision runtime library**, including **a first update
service** to

receive a notification, from a selected one of

a second update service of a predecessor version of said first version of the

runtime library to update an application to said first version of **the
runtime library**, and

a dispatcher of the apparatus to update said application to said first version of

the runtime library,

update, in response to the notification, said application to said first version of **the
runtime library**, and

notify the selected one of

said second update service and

said dispatcher of completion of said update of said application to said first

version of **the runtime library**; and

at least one processor coupled to the storage medium to execute the programming

instructions.

Claim 22 calls for, *inter alia*, an apparatus including:

storage medium having stored therein programming instructions designed to implement a

first version of **an application service provision runtime library**, including

       a first update service to

             receive a notification from **a second update service** of a first predecessor

                      version of said first version of **the runtime library** to update an

                      application to said first version of the runtime library,

             update, in response to the notification, said application to said first version of

                      the runtime library, and

             notify **a third update service** of a successor version of said first version of

                      the runtime library to update said application to said successor

                      version of **the runtime library**; and

at least one processor coupled to the storage medium to execute the programming

instructions.

With regards to items two and three of the above-identified allegations, applicants

respectfully reiterate that they are entitled to claim all described embodiments, which would

include using either separate modules or unified modules and/or multiple devices or a single

device.

Moreover, this versatility is expressly described in the substitute specification on page 13

second paragraph indicating:

> while for ease of understanding, dispatcher function **110** and
> monitor function **118 are described as separate functions,**
> they **may be implemented as one or more components.**

It is accordingly believed that the specification and the claims meet the requirements of 35

U.S.C. § 112, second paragraph. The above-noted changes to the specification are provided

solely to correct a typographical error for clarification or cosmetic reasons. The changes are

neither provided for overcoming the prior art nor do they narrow the scope of the claim or specification for any reason related to the statutory requirements for a patent.

In "Claim Rejections – 35 USC § 102" item 11 on page 4 of the above-identified final Office Action, claims 1-24 have been rejected as being fully anticipated by U.S. Patent No. 6,009,274 to *Fletcher, et al.* (hereinafter "**FLETCHER**") under 35 U.S.C. § 102(b).

As will be explained below, it is believed that the claims were patentable over the cited art in their original form and, therefore, the claims have not been amended to overcome the references.

To anticipate the instant application **FLETCHER** must teach EVERY element of the claim as indicated in MPEP 2131, specifically "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In fact MPEP 2131 clarifies that not only must the claim be expressly or inherently described, but adds that "**The identical invention** must be shown **in as complete detail as is contained in the ... claim**." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)(emphasis added).

The **FLETCHER** reference discloses automatically updating software components on end systems over a network to the newest version. More specifically, in column 5, lines 53-61 **FLETCHER** indicates:

> According to one aspect of the invention, a method is provided for automatically updating software in a network including **a server** and **an agent**, comprising the steps of generating *a server request*, wherein said server request **identifies the newest version level** of a software component; **generating** *an agent update request* **if the agent needs said** *newest version level* **of said software component**; and **updating the agent** *with said newest version level* of said software component in response to said update request.

Thus, **FLETCHER** teaches that "the server request" is transmitted from the server and identifies the newest version level, while "an agent update request" is only generated by the agent to request update to the "newest version level" of the software component. Upon completion of the update process as described in **FLETCHER** the software component is at the newest version, regardless of the number of intervening versions. This can be

problematic, especially if the desired upgrade should occur in stages not by leaping to the "newest version level" as required in **FLETCHER**.

In contrast, the instant application requires that "a first update service" receives "a request to update an application to a second later version" as recited in claim 1 of the instant application. Moreover, the instant application indicates that "a second update service" upgrades the application to a "second later version of the runtime library" as indicated again in claim 1 of the instant application. Thus, in the instant application, the first update service receives the request "to update an application to a second later version" instead of generating "the server request" as indicated in **FLETCHER**. The later version of the instant application is advantageously not necessarily the "newest" version as recited in **FLETCHER**. In this manner the instant application possibly enables a multi-step upgrade.

Moreover, **FLETCHER does not indicate in the identified passage which entity updates the software, agent or server**. Further inquiry reveals that the requested file for the update is sent out "in round-robin fashion" (Co. 11, line 66), by the server to the agents. However, the file must be replaced by the agent on the server. In this manner, even assuming *arguendo* that the server of **FLETCHER** is equivalent to the first update service and the agent of **FLETCHER** is equivalent to the second update service, the agent and server of **FLETCHER** do not operate in the same manner as claimed in the instant application. Namely, the server of **FLETCHER** generates the server request instead of receiving "a request to update" as the first update service of the instant application and the agent of **FLETCHER** generates the agent update request instead of upgrading to a "later version" as recited in claim 1 of the instant application. Even switching the server and agent of **FLETCHER** does not result in the identical invention as claimed in claims 1, 8, 14, 19, or 22 of the instant application. MPEP 2131 requires "**The identical invention** must be shown in as complete detail as is contained in the ... claim**." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)(emphasis added).

Clearly, **FLETCHER** does not show "*receiving*, by a first update service of a first version of said application service provision runtime library, a request to update an application to a second later version of the runtime library" as recited in claim 1 of the instant application. Nor does **FLETCHER** teach or suggest "a second update service of said second later version of the runtime library *upgrading* said application to said second *later version* of the runtime

library" as recited in claim 1 of the instant application. Similar language is found in claims 8, 14, 19, and 22 as previously indicated.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claims 1, 8, 14, 19, or 22. Claim 1, 8, 14, 19, and 22 are, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they are ultimately dependent on claims 1, 8, 14, 19, or 22.

In view of the foregoing, reconsideration and allowance of claims 1-24 are solicited.

In the event the Examiner should still find any of the remaining claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out. In the alternative, the entry of the amendment is requested, as it is believed to place the application in better condition for appeal, without requiring extension of the field of search.
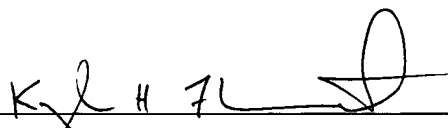
If an extension of time is required, petition for extension is herewith made. Any extension fee associated therewith should be charged to the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,

Schwabe, Williamson & Wyatt, P.C.

Date: ___July 19, 2005___   by: _____

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